

Jam. Yates, and
Mary his Wife. }

Appellants.

Rich. Lewis, Respondent

The Appellant's CASE.

ONE Lewis Morgan, the Appellant Mary's Brother, was seized in Fee of a real Estate of 300 l. a Year, which descended to him upon the Death of his Father, (who died suddenly,) and having made no manner of Provision for the Appellant Mary, or her Sisters Margaret and Elizabeth, his 3 Daughters, and the Appellant Mary's Mother surviving her Father, and having a Joynture, and the Inheritance of other Lands, and being willing to get some Allowance for the Appellant Mary and her Sister's Subsistence, to be paid within a Year after her Death, delivered up part of her Estate to the said Lewis Morgan, who entred into 3 Bonds, dated Sept. 2. 1675. Two of them of the Penalty of 120 l. each, for the Payment of 60 l. apiece, to the Appellant Mary and her Sister Elizabeth, and the other of 140 l. Penalty for Payment of 80 l. to Margaret.

The Appellant Mary's Mother dying in the year 1680, the Bonds became due in 1681 Lewis Morgan, the Appellant Mary's Brother being a Batchelor, and very sickly, and she and her Sisters being his Heirs at Law, were unwilling to disoblige him, and therefore declined putting the Bonds in Suit.

But the Appellants Brother falling unluckily into the Hands of one Edward Lewis Attorney, was by his cunning insinuations, wrought upon (in his Weakness to make his Will, and thereby gave the Respondent who was a Stranger to the Testator, (and of no Kin or Relation) his whole Estate, and made him his sole Executor; but the Will-maker took care to put in his own Son for a Legacy of 100 l. and to Marry his Daughter to the Respondent, so that by making the Will and disinheriting the Appellant, he hath provided very well for his own Family. But by a Codicill to his Will charged his Lands with 15 l. a Year apiece, to the Appellant Mary and her Sisters during their respective Lives.

But that devise was never intended to be in Satisfaction of the Bonds.

The Respondent refusing to pay the Appellant Mary the Money secured by her Bond, the Appellants brought their Action at Law on the said Bond, whereto the Plaintiff appeared, and pleaded Conditions performed, and a Tryall was thereupon had, and upon full evidence a Verdict for the Appellants.

To be relieved against which Verdict, and to have up the other two Bonds the Respondent exhibited his Bill in Chancery, and suggested for Equity that the Bonds were never executed, or if any such the same were obtained without any Consideration, and during the Minority of the said Lewis Morgan; and the Respondent now insists that he Pleaded an ill Plea at Law, but that was never yet aground for relief in Equity.

26th April 1700. The Master of the Rolls upon hearing the Cause, declared 'twas his Opinion that the Annuities of 15 l. a Year apiece, given by the Testator's Will, were in full satisfaction of the three Bonds, and therefore decreed the Bonds to be delivered up and Cancelled, and satisfaction to be acknowledged on Record of the Appellant's Judgment, at the Respondent's Charge, and a perpetual Injunction in the mean time, and since the Decree pronounced, the Respondent hath by surprize procured the same to be signed and enrolled, and for some Consideration have procured Releases from the Appellant's Two Sisters.

That the Appellants do humbly hope, it will plainly appear the 15 l. a Year was not given to the Appellant Mary and her Sisters in satisfaction of the said Bonds, however the Testator's Will cannot bear any such Construction, nor is there any Proof that the said Lewis Morgan intended the said Annuities in Lieu of the Bonds, nor will the Respondent's Bill warrant the Decree. Besides it cannot be perceived but the Will-maker (who was to make such advantage to his own Family) in case it had been intended that the Legacy was in satisfaction of the Debt, would have sufficiently expressed the same in the Will. That the Appellants having recovered a Verdict at Law on a full Defence, humbly hope they shall have the Benefit thereof, and not be stripped of their whole Debt and Costs at Law, and that by the Respondent who hath without any Consideration thrust himself into so large an Inheritance which belonged of right to the Appellant Mary and her Sisters, whereby they have been exposed to great Want and Necessities.

But in case the matter had been doubtful, the Appellants who are defeated, conceive they were entituled to the Construction of a Court of Equity in their Favour.

And therefore it is humbly hoped the Decree shall be reversed.

C. COXE.